

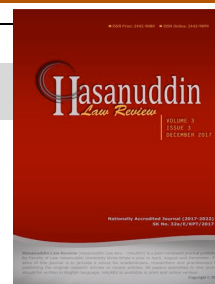
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Prevention of Human Trafficking in Ethiopia: Assessing The Legal Framework

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ABSTRACT

Recent findings have indicated that both in-country trafficking (trafficking of individuals from rural areas to relatively affluent towns and cities) and external trafficking (trafficking of individuals from a given country to foreign countries) are prevalent in Ethiopia. In 2012, the government acceded to the Protocol to Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (The UN Trafficking Protocol, here after). With a view to giving effect to the requirements of this instrument, the government passed in to law Proclamation No. 909/2015 (The Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation), which is the most comprehensive of all laws adopted in Ethiopia to deal with human trafficking. Taking in to account the fact that human trafficking is exacerbated by the absence of regulatory framework on the employment of Ethiopian nationals in foreign countries, the government has also brought in to practice Proclamation No. 923/2016 (Ethiopia's Overseas Employment Proclamation). This article has examined whether the above-mentioned laws of Ethiopia comply with international standards in dealing with prevention strategies.

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1. Introduction

Human trafficking has been causing serious human rights violations on individuals globally. As the United Nations Office on Drug and Crime (UNODC) in its 2016 report disclosed, no nation is free from the problem.¹ Ethiopia is not an exception. Studies conducted by authorities such as the US Department of State and the IOM reveal that the problem is alarming in Ethiopia. The US Department of State in its very recent report of 2016 presented that both in-country trafficking and external trafficking are prevalent in the country. During in-country trafficking, girls from impoverished rural

¹ United Nations Office on Drugs and Crime. (2016). *Global Report on Trafficking in Persons 2016*. United Nations Publication, Sales No. E.16.IV.6. Available online at: https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf Accessed on Sept 10, 2016.

areas are trafficked to more affluent cities such as Addis Ababa, where they are subjected to forced labor in traditional weaving, construction, agriculture, street vending, domestic servitude and prostitution.² As the report clarified, Ethiopian girls suffer exploitation during external trafficking in neighboring African countries such as Sudan and the Middle East.³

Similarly, the IOM reported that significant number of Ethiopian nationals have become prey for traffickers as a consequence of irregular migration.⁴ The report identified three routes through which countless number of Ethiopian nationals are smuggled and trafficked: *Eastern route* (via Djibouti, Somaliland, Puntland and Yemen into Saudi Arabia, Gulf Countries and the Middle East), *Northern route* (transits through Sudan, Egypt, and Libya onward into Europe through crossing of the Mediterranean Sea) and *Southern route* transits through Kenya, Tanzania and other African countries onward to South Africa.⁵

Until very recently, human trafficking was not given adequate attention by the government of Ethiopia. The 1957 Penal Code which was in force until 2004 had no provision on human trafficking despite the serious challenge posed by the practice.⁶ The present Criminal Code, on the other hand, incorporates provisions which criminalize human trafficking.⁷ However, the law failed to adequately deal with the matter as it left out to address various issues associated with human trafficking. Human trafficking, for example, is criminalized if it is carried out for the purpose of exposing individuals to forced labor. Consequently, the law cannot be used to criminalize human trafficking that may be carried out for the purpose of sexual exploitation, slavery or removal of organs. Apart from dealing with crimination of the conduct, moreover, the law does not comprise other essential aspects such as prevention methods and victims' protection.

Overtime, the scope and seriousness of the problem forced the government to look for mechanisms that strengthen the legal framework. In June, 2012, the government acceded to the UN Trafficking Protocol.⁸ In order to give effect to the provisions of the Protocol, the government promulgated Proclamation No. 909/2015 (The Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, hereafter, the Trafficking and Smuggling Proclamation) in August 2015. This Proclamation is the most comprehensive law in Ethiopia that incorporates essential elements of the UN Trafficking Protocol. It made significant improvement on the existing legal framework through dealing with human trafficking in a comprehensive manner. Unlike the previous laws, for example, it has included provisions on prevention and protection of victims in addition to criminalization and prosecution of

² US Department of State. (2016). *Trafficking in Persons Report*. Meeting the Global Challenge: Effective Strategies to Prevent Human Trafficking. pp. 167-169.

³ *Ibid.* p. 167.

⁴ International Organization for Migration. (2015). *Human Trafficking and Smuggling of Migrants in the Context of Mixed Migration Flows: State of Play in the IGAD Region*. Sixth IGAD Regional Consultative Process on Migration (IGAD RCP) – October 2015.

⁵ *Ibid.*, p. 29.

⁶ US Department of State. (2001). *Trafficking in Persons Report*. July 2001, Accessed December 21, 2016. Available online at: <https://www.state.gov/j/tip/rls/tiprpt/2001/3928.htm>

⁷ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, Art.597

⁸ United Nations, Treaty Series, vol. 2237, p. 319. Source: <https://treaties.un.org/doc/Publication/MTDSCG/Volume%20II/Chapter%20XVIII/XVIII-12-a.en.pdf>

the practice. It has stiffened the penalty for human trafficking. Furthermore, human trafficking is defined to capture all forms of exploitations.

The government also analyzed that regulating the employment of Ethiopian nationals in foreign states will greatly contribute in preventing the problem through minimizing the vulnerabilities of such individuals to human trafficking. To this effect, the government adopted Proclamation No.923/2016 which prohibits direct employment of Ethiopian nationals in foreign countries with which Ethiopia has bilateral relation.⁹ The law provides that employers in such countries can hire Ethiopian nationals only through the intermediary of legally registered private agencies or the Ministry of Labor and Social Affairs of Ethiopia.

The following parts of this paper will assess the prevention methods introduced under the above noted laws of Ethiopia in light of the UN Trafficking Protocol. For the sake of convenience, the paper will first highlight on the prevention methods of the UN Trafficking Protocol.

2. Prevention Measures of the UN Trafficking Protocol

The UN Trafficking Protocol focused on six important activities that help to prevent human trafficking. These are: i. Raising the awareness of the public about human trafficking through mechanisms such as information and mass media campaign. ii. Addressing social and economic conditions which cause human trafficking. iii. Protecting victims of trafficking in persons, especially women and children, from revictimization, strengthening border control v. Properly regulating travel or identity documents and vi. Discouraging the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.¹⁰

Awareness raising activities play an important role in preventing human trafficking as it enables the public to understand human trafficking including the methods employed by traffickers and the risks to victims.¹¹ Media should play critical role in this regard. It should make a clear explanation of the phenomena and a reliable portrayal of the victim. However, as women and children are the most vulnerable sections of society to human trafficking, awareness raising has to emphasize them. Other vulnerable groups such as persons belonging to national minorities, migrants and internally displaced persons should also be targeted.¹²

Protecting victims of human trafficking, especially women and children, from re-victimization is also a priority under the UN Trafficking Protocol as an important strategy for preventing trafficking.¹³ The Protocol assumes that former victims are often more vulnerable later on, especially if they are repatriated to places where trafficking is common.¹⁴ Accordingly, effective return of all victims trafficked internally

⁹ Ethiopia's Overseas Employment Proclamation No.923/2016

¹⁰ Read Arts 9-13 of the UN Trafficking Protocol

¹¹ United Nations Office on Drugs and Crime. (2008). *Toolkit to Combat Trafficking in Persons*. United Nations Publication Sales No. E.08.V.14.

¹² UNODC, *Toolkit*, 438

¹³ Read Art.9(1)(b) of the UN Trafficking Protocol

¹⁴ UNODC. (2004). *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and The Protocols Thereto*. New York, p. 297. Available online at: https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf

or across national border requires consideration of the impact of return and repatriation on their safety.¹⁵

Prevention methods should address factors that make persons, especially women and children, vulnerable to human trafficking. The factors include poverty, under development and lack of equal opportunity.¹⁶ Gender-based violence and other instances which bring about human rights violations likewise exacerbate vulnerability to human trafficking.¹⁷ As indicated by the commentary adopted by the Office of High Commissioner for Human Rights (OHCHR), these factors generally make individuals vulnerable to human trafficking by creating economic deprivation and social conditions that limit individual choice and making it easier for traffickers to operate.¹⁸

Strong border control is an essential tool to prevent human trafficking.¹⁹ States Parties are required to take measures that make the conventional means of transport more difficult for traffickers to use.²⁰ In taking measures, it is important to balance border control with freedom of movement. Studies have indicated that lack of legal rights to mobility compels marginal and vulnerable groups to lead underground lives, enhancing their vulnerability to trafficking.²¹ To alleviate this, the UN Trafficking Protocol has explicitly stated that such border measures should not derogate States Parties' international commitment in relation to the free movement of peoples.²²

Controlling the misuse of passports and other travel or identification documents will also discourage traffickers from transporting victims to other States and, hence, help to prevent human trafficking. Taking this in to consideration, the UN Trafficking Protocol demands States Parties:²³

- a. *To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and*
- b. *To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.*

The drafters of the UN Trafficking Protocol note that the endeavor to combat human trafficking will not bring meaningful outcomes unless the demand side is properly considered.²⁴ As OHCHR notes, demand may be generated by employers and consumers for the goods or services produced or provided by trafficked persons.²⁵ It may also come from exploiters and others involved in the trafficking process, such as recruiters, brokers and transporters, who rely on trafficking and victims of trafficking

¹⁵ Economic and Social Commission for Asia and the Pacific. (2003). *Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices*. USA: New York, p. 42

¹⁶ Art.9(4) of the UN Trafficking Protocol

¹⁷ OHCHR. (2010). *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. USA: New York, p. 105. Available online at: http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf

¹⁸ OHCHR, *Recommended Principles*, 105

¹⁹ Art.11 of the UN Trafficking Protocol

²⁰ UNODC, *Legislative Guides*, 297

²¹ Touzenis, K. (2010). *Trafficking in Human Beings: Human Rights and Transnational Criminal Law, Developments in Law and Practices*. UNESCO migration studies 3, p. 68, <http://unesdoc.unesco.org/images/0018/001883/188397e.pdf>

²² Art.11(1) of the UN Trafficking Protocol

²³ Art.12 of the UN Trafficking Protocol

²⁴ Art.9(5) of the UN Trafficking Protocol

²⁵ OHCHR, *Recommended Principles*, 97

to generate income. Accordingly, an endeavor to deal with demand should analyze these sources.

The UN Trafficking Protocol has clearly spelled out that measures aimed at raising the awareness of the public through research, mass media and other public information campaigns do not necessarily require legislative action for their implementation. States parties are required to establish comprehensive policies, programs and other measures to deal with prevention.²⁶ The term 'other measures', of course, connotes that States may take legislative or any other measure if they deem this appropriate.

3. Prevention Methods under the Legal Frameworks of Ethiopia

Unlike the UN Trafficking Protocol, prevention methods are not vividly outlined under the Trafficking and Smuggling Proclamation of Ethiopia. Part Three of the Proclamation which deals with 'Prevention, Investigation and other Procedural Provisions' nowhere discuss government prevention methods. Instead, the Proclamation deals with prevention methods impliedly.

Article 39 of the Proclamation established a National Committee led by the Deputy Prime Minister and comprising Ministry of Justice (now the Office of Attorney General), Ministry of Foreign Affairs, Ministry of Federal Affairs, Ministry of Labor and Social Affairs, Ministry of Women, Children and Youth Affairs, Ministry of Education, Regional States, other governmental organizations, religious institutions, charities and societies, various structures and other respective organizations. Among the primary tasks of the National Committee include prevention of human trafficking through, inter alia, raising the awareness of the public on the adverse effects of human trafficking

In August 2015, the National Committee adopted a Strategic Plan designed to be implemented from 2015-2019.²⁷ The Plan incorporates prevention strategies to raise the awareness of the public and address social and economic factors that cause human trafficking. Such strategies include:²⁸

- a. Promoting entrepreneurship so as to create job opportunities for citizens of Ethiopia;
- b. Protecting the rights of citizens of Ethiopia so as to make them benefit from the development endeavors of the country;
- c. Encouraging citizens to follow lawful procedures while deciding to work abroad; and
- d. Undertaking awareness raising campaign. The Plan underscores that preventive measures should make special focus to protect the human rights of vulnerable groups, especially women and children.

The government, in addition, has taken legislative measures to strengthen border control as per the requirement of UN Trafficking Protocol highlighted above. The Proclamation criminalized and imposed severe penalties on fraudulent use of travel

²⁶ Art.9(1) of the UN Trafficking Protocol

²⁷ National Council of the Federal Democratic Republic of Ethiopia on the Prevention of Human Trafficking, *Strategic Plan* (2015-2019).

²⁸ National Council, *Strategic Plan*, 22

and identity documents.²⁹ The Strategic Plan discussed above also stipulated border control as one mechanism of enhancing prevention of human trafficking.³⁰

However, it is possible to deduce that border control measures introduced under the UN Trafficking Protocol are not properly transposed in to the national laws of Ethiopia. The UN Trafficking Protocol demands States Parties to adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence of human trafficking.³¹ States Parties are also enjoined to sanction non-compliance of such requirement.³² On top of this, the instrument outlines that States Parties should consider taking measures that permit, in accordance with their domestic law, the denial of entry or revocation of visas of persons implicated in the commission of human trafficking and strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.³³

The above requirements are not adequately dealt with in the legal frameworks of Ethiopia. The Proclamation merely sanctions intentional assistance and facilitation of trafficking in persons through the provision of transportation or facilitation of the transportation of victims of human trafficking.³⁴ It does not penalize commercial carriers, owners or operators of any means of transport who recklessly facilitate trafficking in persons through direct provision or facilitation of the transportation of victims of human trafficking. This lacuna is created as a result of the absence of any law which requires commercial carriers or the owners or operators of any means of transport to ascertain that all passengers are in possession of the travel documents required for entry into the receiving state.³⁵

The second National Human Rights Action Plan of Ethiopia adopted in 2017 to be implemented till 2019 also comprises key mechanisms that help to prevent human trafficking.³⁶ In the document, it is provided that the government will perform essential activities that strengthen prevention of human trafficking through the co-ordinated efforts of the various organs of the State and other stake holders.³⁷ Through involving the media and community based organizations, the government also planned to increase the awareness of the society about human trafficking through devoting particular attention to areas where the practice is more prevalent.³⁸

²⁹ Art.7 of the Trafficking and Smuggling Proclamation

³⁰ National Council, *Strategic Plan* 22

³¹ Art.11(3) of the UN Trafficking Protocol

³² Art.11(4) of the UN Trafficking Protocol

³³ Art.11(5) and (6) of the UN Trafficking Protocol

³⁴ Art.4(4) of the Trafficking and Smuggling Proclamation.

³⁵ It is elaborated in the *Travaux Preparaires* of the UN Trafficking Protocol that such obligation to be placed on carriers should be limited to ascertaining basic possession of travel documents by passengers. As such, it should not go to the extent of imposing obligation on carriers to assess the validity or authenticity of travel documents possessed by passengers (UNODC, *Legislative Guides*,409)

³⁶ The second National Human Rights Action Plan of Ethiopia was launched in April 2017. Available online at: <http://www.ena.gov.et/en/index.php/politics/item/3110-ethiopia-launches-2nd-human-rights-action-plan> Accessed on December 18, 2017,

³⁷ The Federal Democratic Republic of Ethiopia Second National Human Rights Action Plan (2017), 15.

³⁸ *Ibid*,

In February 2016, the government made a landmark decision to prevent human trafficking through regulating overseas employment relations. Ethiopia's Overseas Employment Proclamation (Proclamation No.923/2016) was adopted to protect the human rights violations of Ethiopians working abroad and discourage vulnerabilities to human trafficking.³⁹

As Mattar,⁴⁰ precisely put, migrant workers (including Ethiopians) who illegally cross the transit countries of Algeria, Libya or Morocco become vulnerable to trafficking very easily. Even those domestic workers who lawfully enter foreign States were not offered adequate protection by the laws of Ethiopia. Domestic workers were not given accurate information about the working conditions of their employment including the amount of salaries that they are going to be paid abroad.⁴¹ The consequence was that a number of domestic workers became subjects of human trafficking as a result of false promise made to them by traffickers.⁴²

The Overseas Employment Proclamation incorporates important safeguards for the protection of the rights of Ethiopian workers who seek to take up overseas employment. The law bestows responsibility on the government to monitor the employment relation between Ethiopian workers and employers. Above all, the law bans any direct recruitment and employment of Ethiopian workers in foreign States except in some limited circumstances.⁴³ Employers in foreign States are allowed to recruit and employ Ethiopian workers only through the Ministry of Labour and Social Affairs (Ministry hereafter) or lawfully licensed Agencies.⁴⁴

The Ministry is empowered to monitor the overall recruitment and employment process of workers. Employment contracts concluded between Ethiopian domestic workers and their employers will not have legal effect unless approved by the Ministry.⁴⁵ Moreover, the Ministry is empowered to prepare model employment contracts which contracting parties may use.⁴⁶ The contents of the model contract will be formulated taking in to account international labor standards.⁴⁷ Contracting parties are also granted the freedom to draw their own terms of contract.⁴⁸ In such cases, however, the terms of the employment contracts are expected to be in harmony with public morals, laws and policies of Ethiopia.⁴⁹

It is expected that the Overseas Employment Proclamation will reduce the number of illegal migrants crossing Arab and other foreign countries and help to prevent human trafficking. The strong supervision of employment contracts concluded by Ethiopian domestic workers and the resulting improved working condition may encourage

³⁹ Read Para.2, Preamble to Ethiopia's Overseas Employment Proclamation

⁴⁰ Mattar, M.Y. (2002). "Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses", *Fordham International Law Journal*, 26, 107.

⁴¹ Wakgari, G. (2014). "Causes and Consequences of Human Trafficking in Ethiopia: The case of Women in the Middle East," *International Journal of Gender and Women's Studies*, 2, 244.

⁴² Beydoun, A. (2006). "The Trafficking of Ethiopian Domestic Workers into Lebanon: Navigating through a Novel Passage," *Berkeley Journal of International Law*, 24, 1024.

⁴³ Art.6 of Ethiopia's Overseas Employment Proclamation

⁴⁴ Art.6 of Ethiopia's Overseas Employment Proclamation

⁴⁵ Art.5 of Ethiopia's Overseas Employment Proclamation

⁴⁶ Art.17 of Ethiopia's Overseas Employment Proclamation. The Model employment contract will deal with issues on regular working time, favorable wages for regular working hours, overtime pay, etc.

⁴⁷ Art.17(2) of Ethiopia's Overseas Employment Proclamation

⁴⁸ Art.18 of Ethiopia's Overseas Employment Proclamation

⁴⁹ Art.18 of Ethiopia's Overseas Employment Proclamation

others to follow lawful means of entering in to foreign countries for work. Moreover, application of the Overseas Employment Proclamation will enable workers who opt to work abroad to get ample and accurate information about the working conditions and other related issues associated with their job. This will close the door for potential abuse and misleading by traffickers.

However, it is important not to lose sight of the fact that the Overseas Employment Proclamation will only have effect with respect to foreign States with which Ethiopia has bilateral agreement.⁵⁰ Up until the writing of this paper, the government has not signed any bilateral agreement with foreign countries on the issue of overseas employment. However, efforts are underway to regulate and improve the working conditions of overseas domestic workers through concluding bilateral agreement with some Arab Countries.⁵¹

In the overall process of preventing human trafficking, the role of civil societies should not be undermined. The UNODC has analyzed that civil societies can make tremendous contribution in preventing human trafficking by conducting intensive awareness-raising against trafficking at the local and national levels, collecting data and conducting research to inform policies and programmes and launching income-generating programmes in trafficking-prone areas.⁵² In light of this, the UN Trafficking Protocol obliges States Parties to create conducive environment for civil societies that enable them to play their role in the prevention of human trafficking. Policies, programs and other measures established by States, to this end, are expected to include cooperation with civil societies.⁵³

The Proclamation acknowledges the role of civil society in the prevention process since, as considered above, charities and societies are included as members of the National Committee. As the 2015 Report of the Task Force indicates, however, a minimal role is played by civil societies in the prevention of human trafficking. No activity indicating the participation of civil society organizations such as charities and societies is mentioned in the report.⁵⁴ This might be the result of the restrictive Charities and Societies Proclamation adopted in February 2009.⁵⁵ The law prevents civil society organizations earning more than 10 percent of their budget from foreign sources from operating on human and democratic rights.⁵⁶

4. Conclusion

The legal frameworks of Ethiopia have made noticeable progress in dealing with prevention of human trafficking. Effort has been made by the government to transpose the essential aspects of the UN Trafficking Protocol in to the legal frameworks of the country in a comprehensive manner.

⁵⁰ Art.12 of Ethiopia's Overseas Employment Proclamation

⁵¹ Interview with Yibeltal Walelign, Coordinator of the Secretariat office of the Anti-Human Trafficking and Smuggling of Migrants Task Force, Addis Ababa (Dec 13,2016).See also, US Department of State, Trafficking in Persons Report 2017, Accessed on December 19, 2017,Available online at: <https://www.state.gov/j/tip/rls/tiprpt/2017/index.htm>

⁵² UNODC, *Toolkit*, 15.

⁵³ Art.9(3) of the UN Trafficking Protocol.

⁵⁴ Report of the Anti-Human Trafficking and Smuggling of Migrants Task Force (2015), 10.

⁵⁵ Proclamation to Provide for the Registration and Regulation of Charities and Societies (Proclamation No.621/2009).

⁵⁶ Read Art.2(2) in conjunction with Art.14(5) of Proclamation No.621/2009.

However, to further strengthen the effectiveness of the legal framework in preventing the problem, it is advisable that the government should consider the following recommendations:

- i. Border control measures should be comprehensive enough to adequately supplement the prevention measures designed by the National Committee. To this end, the law should impose responsibility on commercial carriers or operators of any means of transport to ascertain that all passengers who travel to other countries are in possession of travel documents required for entry into the receiving state;
- ii. The promulgation of Ethiopia's Overseas Employment Proclamation (Proc. No. 923/2016) is laudable for it helps to prevent human trafficking through minimizing the vulnerabilities of Ethiopian migrants to traffickers in foreign countries. As the law will operate on the basis of cooperation agreement with foreign countries, the government should strive to conclude such agreements so as to increase the effectiveness of the law in preventing human trafficking.
- iii. As the UN Trafficking Protocol clearly stipulates, efforts to prevent human trafficking should involve civil society organizations. In view of this, the legal framework of Ethiopia should be clearly formulated to enable civil societies to make valuable contributions in the prevention of human trafficking.

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